

REMARKS

This response is timely filed as it is accompanied by a Petition for a Three-Month Extension of Time and the requisite fee therefore, thereby extending the response date to May 3, 2006.

Status of Claims

Claims 1-4 and 6-16 are pending and at issue in the application.

Information Disclosure Statements

Applicant also includes herewith a Forth Supplemental Information Disclosure Statement (IDS) including a partial English language translation of the DE 195 03 027 A1 cited by the examiner in the outstanding Office Action.

Authorization to Charge Deposit Account

While checks for each of the fees discussed above are included herewith, the Commissioner is hereby authorized to charge any deficiency in the amount enclosed or any additional fees which may be required during the pendency of this application under 37 C.F.R. § 1.16 and § 1.17 to Deposit Account No. 13-2855. A copy of this transmittal is enclosed herewith. Additionally, please refund any overpayment to Marshall, Gerstein & Borun LLP at the address below.

Prior Art Rejections

Applicant respectfully traverses the rejection of claims 1-4 and 6-16 as obvious over DE 35 12 644 A1 ("Bartels & Rieger") in view of one or more of U.S. Patent No. 5,018,518 ("Hubner"), DE 195 03 027 A1 ("Mucha"), Wilcox and U.S. Patent No. 4,590,951 ("O'Conner"). Applicant respectfully requests reconsideration and withdrawal of the rejections.

Each of the claims at issue recites a breathing apparatus including a tank adapted to contain air under pressure, a regulator coupled to the tank to enable delivery of the pressurized air to a user, a filter or a filter system adapted to enable ambient air to pass through a filter medium, a powered air flow unit or moving means that forces ambient air into the filter system, through said filter medium and into operative relationship with a user of the apparatus, a valve assembly operatively associated with the filter system and the tank to control the flow of cleaned air from said filter system or fresh air from the tank and a switch associated with the powered air flow unit or moving means that controls energization of the powered air flow unit or moving means in conjunction with the operation of the valve assembly.

Thus, each of the claims at issue basically recites a breathing apparatus having dual sources of air (including pressurized or stored air, and cleaned or filtered ambient air provided with the use of an air flow unit or moving means, such as a motor, a fan, a pump, etc.) The recited breathing apparatus also includes a valve assembly that controls the flow of air to the user from one or both of the dual air sources, in conjunction with a switch that controls operation or energization of the air flow unit in conjunction with the operation of the valve assembly, e.g., in conjunction with the position of the valve assembly. None of the cited art discloses or suggests a breathing apparatus having dual sources of air in which one of the sources of air is a powered filtered air mechanism that includes a switch to effect the operation of the powered unit in conjunction with the operation of a valve that controls which source of air to connect to the user.

While Bartels & Rieger discloses a breathing apparatus having a source of pressurized or stored air and a filter that filters ambient air, the Bartels & Rieger system does not use a

powered air flow unit or a means adapted to move ambient air, such as a motorized fan or pump, much less a switch that energizes the powered air flow unit or moving means in conjunction with the operation of a valve that controls the flow of air to a user from one or both of the tank and the filter. Instead, the Bartels & Rieger system uses a non-powered filter mechanism, such as a conventional, manually operated filter. This non-powered filter mechanism relies solely on the user's lungs to produce the negative pressure that sucks air through the filter mechanism to be breathed by the user. In fact, Bartels & Rieger teaches away from using a powered mechanism, as Bartels & Rieger specifically states that it is desirable to have the breathing apparatus be as small and light as possible (see, Translation, page 3, paragraph 5). The addition of the weight of a powered air source, such as a fan motor and fan assembly, would increase the weight of the Bartels & Rieger system thereby rendering it less useful or desirable according to the stated purpose of Bartels & Rieger. In any event, because Bartels & Rieger does not disclose the use of a powered filtered air source, it cannot disclose or suggest the use of a switch of any sort that energizes the powered air source, much less that does so in conjunction with the valve assembly that controls the flow of air from the stored air source and/or the filtered air source.

Hubner fails to disclose a breathing apparatus having two sources of air, much less one having a switch that controls the operation of a powered filtered air source in conjunction with the operation of a valve assembly. In particular, Hubner discloses a conventional and known powered air filter mechanism having a motor that assists the flow of air through a filter. However, Hubner does not disclose or suggest that this mechanism can or should be used, in any manner, with a source of pressurized or stored air, much less that it might be possible, advantageous or otherwise desirable to have a switch for the powered air filter

mechanism operate in conjunction with a valve that controls air flow from one or both of a source of pressurized air and a source of filtered air.

In contrast to Bartels & Rieger and Hubner, Wilcox and Mucha disclose a combination self-contained breathing apparatus in combination with a blower assisted filter system. However, as with Bartels & Rieger and Hubner, both Wilcox and Mucha fail to teach or suggest a breathing apparatus that includes a valve assembly that controls the flow of air to the user from one or both of the dual air sources, in conjunction with a switch that controls operation or energization of the air flow unit in conjunction with the operation of the valve assembly.

In particular, Wilcox discloses a control module that contains a pressure display having an on/off switch. The control module allows the operator to switch between breathing modes from filtered air to compressed air. However, Wilcox never discloses, teaches or suggests the manner in which the control module allows the operator to switch between the air sources. Specifically, in the Wilcox brochure it simply states that the on/off switch allows the operator to switch breathing modes from filtered air to compressed air. There is no mention that the switch energizes the airflow or that the switch controls the valve assembly. Therefore, it is unascertainable as to whether the switch energizes the airflow or whether the switch controls the valve assembly, as is suggested by the examiner. In fact, the examiner recognizes this shortcoming, as the examiner stated that Wilcox may not teach the movement of the valve in combination with adjustment of a blower by the single switch.

In doing so, the examiner then resorts to Mucha for teaching both the movement of the valve and the energization of the blower. Unfortunately, Mucha does not teach or suggest a controller that energizes the blower along with regulating the valve. In particular, Mucha discloses a controller operatively connected to a control element for regulating a valve that

switches between providing filtered air and compressed air. However, Mucha does not disclose that the controller activates or energizes the blower. In fact, there is no mention as to how the blower is activated at all. In contrast, Mucha teaches away from a controller or control element that controls both the energization of the blower and the valve. Specifically, Mucha teaches (Figure 4) that the suction or blower equipment (80) operates continuously, such that a passageway that provides the filtered air requires a discharge path when the operator is using compressed air. Thus, Mucha teaches that regardless of whether filtered air or compressed air is used, the suction or blower equipment (80) is energized.

Similar to Hubner, O'Conner merely discloses a powered filtered air respirator that does not include a source of stored or pressurized air. Therefore, for the reasons discussed above with respect to Hubner, O'Conner does not disclose or suggest a switch for a powered air filter mechanism that operates in conjunction with a valve that controls air flow from one or both of a source of pressurized air and a source of filtered air.

It is clear that the prior art must make a suggestion of or provide an incentive for a claimed combination of elements to establish a *prima facie* case of obviousness. *See, In re Oetiker*, 24 U.S.P.Q.2d 1443, 1446 (Fed. Cir. 1992); *Ex parte Clapp*, 227 U.S.P.Q. 972, 973 (Bd. Pat. App. 1985). This principle holds true even if the applied art could be modified to produce the invention recited by the pending claims. *See, In re Mills*, 16 U.S.P.Q.2d 1430, 1432 (Fed. Cir. 1990); *In re Gordon*, 221 U.S.P.Q. 1125, 1127 (Fed. Cir. 1984) ("The mere fact that the prior art could be so modified would not have made the modification obvious unless the prior art suggested the desirability of the modification.") Because each of Bartels & Rieger, Hubner, Mucha, Wilcox, and O'Conner fails to disclose or provide any motivation for using a switch for a powered filtered air mechanism to operate in conjunction with a valve

that controls air flow from one or both of a source of pressurized air and a source of filtered air, it follows that none of these documents can render any of the claims at issue obvious.

CONCLUSION

For the foregoing reasons, applicant respectfully requests reconsideration and withdrawal of the rejections and allowance of claims 1-4 and 6-16. If there are matters that can be discussed by telephone to further the prosecution of this application, applicant respectfully requests the examiner to call its attorney at the number listed below.

Dated: May 2, 2006

Respectfully submitted,

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